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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,837	02/13/2001	Thomas Birkholzer	1998P03666WOUS	2743

28204 7590 05/18/2004
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EXAMINER

SAADAT, CAMERON

ART UNIT PAPER NUMBER

3713

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/762,837

Applicant(s)

BIRKHOLZER ET AL.

Examiner

Cameron Saadat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-15 and 17-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-15 and 17-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

In response to amendment filed 2/20/2004, claims 13-15 and 17-35 are pending in this application. Claims 1-12 and 16 are cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 13-15, 17-24, and 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns (USPN 5,904,484), in view of Baker (USPN 5,486,001).

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns (U.S. Patent No. 5,904,484), in view of Baker (USPN 5,486,001), further in view of Uekane et al. (USPN 5,559,554; hereinafter Uekane).

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

Response to Arguments

Applicant's arguments filed 2/20/2004 have been fully considered but they are not persuasive.

Applicant asserts that the marker insertion means of the instant invention is based on detection of various characteristic points, lines or contours of a person within a video image. Whereas Burns discloses a manual marker insertion means based on matching a person with an instructor by gender, age, and body type.

Although Burns does describe a manual marker insertion means in one embodiment, the reference additionally discloses an insertion means that automatically adapts the size or insertion position of the marker in a manner dependent upon characteristic points, lines, contours *or equivalent characteristics* of a person depicted *on the screen*. In (col. 7, line 66 – Col. 8, line 4), Burns discloses, "In an alternate embodiment, the recorded image of the instructor (the marker) in the motion template 10 is scaled, such as by a computer, to the size of the student's image. Several scaling techniques are available commercially in animation software."

Applicant further contends that this alternate embodiment described in Burns does not generate the marker based upon a person's characteristic points etc. However, it is noted that the limitations recited in the claim language only require adapting the marker based on detection of characteristic points, lines, contours, *or equivalent characteristics of the person shown in the recorded video image*. Thus, Burns discloses all of the claimed limitations including the feature

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of adapting the marker based on *equivalent characteristics of the person shown in the recorded video image*.

It is additionally emphasized, by the applicant, that the combination of Baker and Burns would not arrive at the presently claimed invention. However, the standard of patentability is what the prior art, taken as a whole, suggests to an artisan at the time of the invention. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986). The question is not only what the references expressly teach, but what they would collectively suggest to one of ordinary skill in the art. *In re Simon*, 461 F.2d 1387, 1390, 174 USPQ 114, 116 (CCPA 1972). In this case, Burns discloses a system for self-monitoring by a moving person of body movements, comprising: a video camera configured to generate a recorded video image or image sequence; a monitor operatively coupled to the video camera for outputting the recorded video image or image sequence; an insertion component configured to insert at least one moving marker; wherein the marker automatically adapts in size or insertion position based on detection of characteristic points, lines, contours, *or equivalent characteristics of the person shown in the recorded video image* (col. 7, line 66 – Col. 8, line 4). Burns discloses all of the claimed subject matter of claim 13 with the exception of not explicitly disclosing that the insertion component is configured to *automatically* adapt the movement speed of the moving marker to the movement speed of the moving person or of a displayed area of the moving person. Burns suggests a means for providing control of the speed of the moving marker (See Claim 14), but does not specify an *automatic* means to control the speed. However, Baker discloses a system for self-monitoring body movements, wherein the insertion component is configured to *automatically* adapt the movement speed of the moving marker and the movement speed of the moving person to match one another (Col. 7, lines 44-54). Hence, it would have been obvious to a person of ordinary skill in the art to modify the

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manual speed control of the marker described in Burns, by automatically adapting the movement speed of the moving marker, in light of the teachings Baker, thereby automatically synchronizing the images for accurate comparison.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

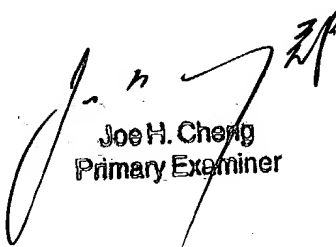
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is 703-305-5490. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on 703-308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Joe H. Cheng
Primary Examiner